

**IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
1:16 CR 112**

<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Vs.</b>	)	<b>ORDER</b>
	)	
<b>TERRY DANIEL EARLY,</b>	)	
	)	
<b>Defendant.</b>	)	
<hr style="width:40%; margin-left:0"/>	)	

THIS CAUSE coming on to be heard before the undersigned pursuant to a Violation Report (#17) filed by the United States Probation Office alleging that Defendant had violated terms and conditions of his presentence release. At the call of this matter on for hearing, it appeared that Defendant was present with his counsel, A. Patrick Roberts, and the Government was present through AUSA Chris Hess. From the evidence offered and from the statements of the Assistant United States Attorney and the attorney for the Defendant, and the records in this cause, the Court makes the following findings.

**Findings:** At the call of this matter, Defendant, by and through his attorney, admitted the allegations contained in the Violation Report. Testimony was presented by the Government through U.S. Probation Officer Elizabeth Cullen.

The Defendant was charged in a bill of information (#1) filed on September

16, 2016 with presenting false, fictitious and fraudulent claims against the United States in violation of 18 U.S.C. § 287. A hearing was held in regard to the detention of Defendant on October 12, 2016 and on that date the undersigned entered an Order releasing Defendant on terms and conditions of presentence release. (#8) & (#9). The undersigned further set conditions of release which included the following:

(8)(o) Defendant shall refrain from any use of alcohol.

The Defendant entered a plea of guilty to the charge contained in the bill of information on that same date.

On October 20, 2016, Officer Cullen and U.S. Probation Officer Jennifer Call went to the home of Defendant and they found in his refrigerator 12 containers of beer. Defendant had been consuming alcohol and admitted he had consumed five 12 fluid oz. Miller-High Life beers. Officers Cullen and Call required that Defendant take an alca-sensor test which showed Defendant's blood alcohol content was .155.

**Discussion.** 18 U.S.C. § 3148(b)(1) provides as follows: The judicial officer shall enter an order of revocation and detention if, after a hearing, the judicial officer

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(1) finds that there is----

(A) probable cause to believe that the person has committed a Federal, State, or local crime while on release; or

(B) clear and convincing evidence that the person has violated any other condition of release; and

(2) finds that ---

(A) based on the factors set forth in section 3142(g) of this title, there is no condition or combination of conditions of release that will assure that the person will not flee or pose a danger to the safety of any other person or the community; or

(B) the person is unlikely to abide by any condition or combination of conditions of release.

If there is probable cause to believe that, while on release, the person committed a Federal, State, or local felony, a rebuttable presumption arises that no condition or combination of conditions will assure that the person will not pose a danger to the safety of any other person or the community.”

Based upon the evidence, the undersigned does not find there is probable cause to believe Defendant committed a federal, state or local crime while on release. It does appear by clear and convincing evidence that Defendant has violated the condition of release which requires him to refrain from any use of alcohol.

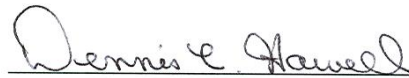
It was the recommendation of Officer Cullen that Defendant be again released on terms and conditions of release which required that he comply with Officer Cullen’s instructions to Defendant regarding outpatient treatment for his use of alcohol. It appears to the undersigned that Defendant was arrested on October 28, 2016 and he has spent four days of incarceration awaiting hearing on the Violation Report. The undersigned will accept the recommendation of Officer Cullen and will again release Defendant on terms and conditions of presentence release.

### **ORDER**

**IT IS, THEREFORE, ORDERED** that the unsecured bond and the terms

and conditions of pretrial release (#8) & (#9) previously entered in this matter are hereby **REVOKED**. However, it is further **ORDERED** that Defendant be released on further terms and conditions of release as entered by this Court in documents (#19) & (#20). The Defendant is further instructed by the Court not to consume or possess any alcoholic beverage whatsoever.

Signed: November 9, 2016

A handwritten signature in cursive script, reading "Dennis L. Howell", written over a horizontal line.

Dennis L. Howell  
United States Magistrate Judge

